Conversion of a Partnership Firm into a Limited Company

There would be 2 options available to a partnership firm for continuing the business in the form of a company:

1. To dissolve the firm and incorporate a new company under the Companies Act, 1956; or

2. Incorporate a company which can legally take over the business of the firm and continue the same business under **Part IX of the Companies Act, 1956**.

- The firm may be converted into a company by following the provisions of Part IX of the Companies Act, 1956 since there are many benefits which both the company and the firm stand to enjoy.

- **Section 565 to 581** prescribes the law and procedure for Companies authorised to register under Part IX of the Companies Act, 1956.

- **Section 565** of the Companies Act, 1956 provides that any company formed in pursuance of any Act of Parliament or any other Indian Law other than the Companies Act, 1956; consisting of **seven or more** members may at any time register itself under this Act, either as an unlimited company or as a company limited by shares or limited by guarantee.

- **Circular No. 5/99 dated 19/05/1999** and **Press Release dated 05/08/1999**, clarified that, the Registrar of Companies will continue to register Partnership Firms under **Part IX of the Companies Act** as Joint Stock Companies on satisfying the procedure and conditions. Accordingly, an existing Partnership Firm can be registered under the Companies Act.

- Joint Stock Companies has been specifically defined for the purposes of Part IX under section 566 of the Companies Act, 1956.

  Meaning of a 'Joint Stock Company' as per Section 566:

  For the purposes of Part IX, as far as the registration of companies as companies limited by shares is concerned, a joint-stock company means a company:

- Having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other,

- Formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

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Such a company, when registered with limited liability under Part IX of the Companies Act, shall be deemed to be a company limited by shares

STEPS FOR INCORPORATION OF COMPANY UNDER PART IX:

Step 1: Hold a meeting of the partners

Step 2: Application for Director's Identification Number

Step 3: Name approval

Step 4: Registration of Company

Step 5: Issue of Certificate of Incorporation

Step 6: Issue of Certificate for Commencement of Business

Step 1: Hold a meeting of the partners to transact the following:

Assent of majority of its members as are present in person or where proxies are allowed, by proxy, at a general meeting summoned for the purpose of registering the firm under Part IX of the Companies Act, 1956. The majority required to assent as aforesaid shall consist of not less than **3/4** of the members as are present in person or where proxies are allowed, by proxy:

- To authorize one or more partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the firm as a Company.
- To execute a supplementary Partnership Deed to align it with the requirements as under:

- There must be at least **7** partners in the partnership firm.
- The firm may be registered with the Registrar of Firms.
- There must be a **fixed capital** divided into units;(Minimum paid capital of **Rs.5,00,000/-**)
- There must be provision of converting a firm into company.
- There must be an agreement by the partners to convert the partnership to a company. This can be done by a contract in writing to this effect to which the partner's resolution for conversion can be attached as annexure.

- Execute a settlement deed.

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Step 2: Application for Director's Identification Number:

- Ministry of Company Affairs has made Director's Identification Number mandatory for each Director. **Following details are required for DIN**:

- Name(s)
- Father's Name(s)
- Permanent Residential Address(s)
- Present Residential Address(s)
- Occupation
- Name of the Companies in which the promoter is Director/Promoter
- Date of Birth
- E-mail IDs

- Ministry of Company affairs have initiated the process of E-filing of the Documents, wherein the either of the Director needs to have Digital Signature Certificate. For the matter of Convenience in submission of documents with Registrar of Companies and expediting the processing, it is advisable to obtain the Digital Signature Certificate from prescribed authorities.

- **Following documents are required for DIN/Digital Signature**: **Copy** of

- Passport
- Voter ID
- Ration Card
- Driving License
- PAN Card
- Telephone Bill
- Electricity Bill
- Bank Statement.

- The application is required to be signed by the promoter(s).

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Step 3: Name approval:

Under the Part IX route, one of the major advantages is that the business can be run under the same name as that of the firm except that in addition to the name of the firm the words 'limited' has to be added. However, if there is a company already in existence, the name would not be available. In that case, the following steps need to be taken:

- ➢ An application in **Form No. 1A** needs to be filed with the Registrar of Companies (ROC) with the following details stating the fact that the partnership firm proposed to be converted under Part IX of the Companies Act.

- Certified true copy of Partnership Deed.
- Certified true copy of the latest balance sheet of the partnership firm.
- Certified true copy of the latest income tax assessment order/return.
- Consent of all the partners stating that they have agreed to register the partnership firm as a Company.
- Certified True Copy of the resolution passed by the firm in this regard.

- ➢ The application is required to be digitally signed by **one** of the promoters.
- ➢ **The details to be stated in the said application are as follows** :

- Maximum **Six** alternative names for the proposed company. (in order of preference)
- Names , Father's/ Husband's Name, Permanent Residential Addresses, Present Residential Address, Occupation, Name of the Companies in which the Promoter is Director/Promoter , Date of Birth , DIN of the Promoters.
- Authorised Capital of the proposed company.
- Main objects of the proposed company.
- State of Registered Office of company

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Step 4: Registration of Company:

- On obtaining the approval of name , file the following documents with the registrar of Companies within 60 days from the date of name approval:

1. Two sets of Memorandum and Articles of Association of the Company. One set shall be duly stamped. These will be similar in all respects to a normal Memorandum and Articles of Association except that it incorporates therein terms of the settlement deed
2. The Memorandum and Articles of Association is to be stamped as per the Indian Stamp Act.

- Thereafter these documents are required to be executed by the promoters in their own hand after the date of Stamping of Memorandum & Article of Association in duplicate stating their full name, father's name, residential address, occupation, number of shares subscribed for & Signature etc.
- However, if any director is **Foreigner** and not present in India, his signature should be attested in Indian Embassy located in his home country.
- **Form No. 1** - This is a declaration to be executed on a non-judicial stamp paper by one of the directors of the proposed company or other specified persons such as Chartered Accountants, Company Secretaries, Advocates, etc. stating that all the requirements of the incorporation have been complied with.
- **Form No. 18** - This is a form to be filed by one of the directors of the company informing the ROC the registered office of the proposed company.
- **Form No. 32** - This is a form stating the fact of appointment of the proposed directors on the board of directors from the date of incorporation of the proposed company and is signed by one of the proposed directors.
- Power of Attorney signed by all the subscribers to MOA authorizing **two** persons. One of the subscribers or any other person to act on their behalf for the purpose of incorporation and accepting the certificate of incorporation.
- **Form No. 37** – This form is an application by an existing Joint Stock Company for registration as a limited / an unlimited company.
- Declaration by **two** partners verifying the particulars set forth in the above mentioned documents.
- Consent letters from Directors

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- Filing fees as may be applicable.
- **Other information to be submitted**:

- A list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than **6** clear days before the date of registration were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number.
- **If the company is intended to be registered as a limited company, a statement specifying the following particulars :-**

  a) The nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists.

  b) The number of shares taken and the amount paid of each share.

  c) The name of the company, with the addition of the word "Limited", as the last word / words, in case the company is being registered with limited liability.

Step 5: On completion of the formalities, the registrar shall register the Company under Part IX of the Act and issue a certificate of incorporation

Step 6: Issue of Certificate for commencement of business:

- After completion of **first three** stages a private limited company may commence its business but a public limited company is required to obtain certificate for commencement of business from Registrar of Companies. For obtaining the Certificate for commencement of its business, the Company is required to submit following documents with Registrar of Companies:

- **Form 20** to be executed on a non-judicial stamp paper.
- Statement in Lieu of Prospectus.
- Affidavit from each director's stating that the company has not commenced its business.
- Details of preliminary expenses
- Board resolution for approval of preliminary expenses.
- Board resolution for appointment of first Auditors.

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- Consent letter from the Auditors for acting as Statutory Auditors.

- Registrar of Companies thereafter shall process the documents and if all the documents are in order then he will issue a Certificate for commencement of Business

Steps after incorporation of public company*:*

- Once the new company is formed, the takeover agreement would be entered between the Partnership firm and the newly incorporated company
- Convene a Board Meeting after giving notice to all the directors of the newly incorporated company immediately after incorporation as per section 286 of the Companies Act, 1956 to adopt the agreement entered into by the company.
- In the above Board Meeting also fix up the date, time , place and agenda for calling a General Meeting to pass a Special Resolution under section 81(1A) of the Companies Act, 1956 giving powers to the Board of Directors to issue and allot equity shares to Partners of the firm.

Effect of Registration under part IX:

- **Vesting of Property**: All property, movable as well as immovable, including actionable claims belonging to or vested in the firm at the time of registration shall, on such registration pass to and vest in the company as incorporated under Part IX. **[Section 575].**
- The registration of a company under Part IX shall not in any manner affect its rights or liabilities in respect of any debt or obligation incurred or any contract entered into, by, to, with or on behalf of the firm before registration. **[Section 576].**
- All suits and other legal proceedings taken by or against the company or any public officer or member thereof which were pending at the time of registration may be continued in the same manner as if registration had not taken place. However, no execution can be done against the property or person of any individual member of the company on any decree or order obtained in such suit or proceeding. If the property of the company is inadequate to satisfy the decree or order, an order for winding up the company may be obtained. **[Section 577].**
- All provisions of any Indian law or other instrument constituting or regulating the company shall apply to the registered company in the same manner as if the company had been formed under

the Companies Act, 1956 and those conditions were required to be contained and were contained in its Memorandum and Articles of Association. **[Section 578].**

- As per section 383A of the Companies Act, if the paid up capital of the Company is Rs. 200 lacs or more than the company is required to appoint a full time Company Secretary.
- As per section 269 of the Companies Act, 1956 if the paid up capital of the company is Rs. 500 lacs or more than the Company is required to appoint either Managing Director or Whole Time Director or Manager.
- Debts and liabilities are not automatically transferred to the new company and therefore a novation agreement will have to be entered into by the company with its debtors and creditors.
- It is advisable for the firm to obtain an indemnity from the company to the partnership firm for all acts, deeds and things done after the registration under Part IX and also vice versa. This is required as the liability of the firm is unlimited and extends to the personal assets of the partners.
- It is also to be noted that the rights, liabilities, debts and obligations or any contracts entered into by the firm shall remain unaffected as it existed prior to the registration of the company under Part IX of the Companies Act, 1956.
- Comply with all the relevant provisions of the Companies Act, 1956 i.e. call requisite meetings, register charges, comply with section 58A if necessary, etc
- **Stamp duty:** Conversion of firm to company is exempted from payment of stamp duty as there is no change in the ownership and no transfer is involved.

Thus by applying the above mentioned procedure, a partnership firm can convert itself into limited company